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State Water Resources Control Board

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Arnold Schwarzenegger
Governor

NOTICE OF OPPORTUNITY TO COMMENT

**PROPOSED APPROVAL OF AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL COAST REGION (BASIN PLAN)
TO: (1) ADD THE APTOS CREEK WATERSHED TO THE HUMAN FECAL MATERIAL DISCHARGE PROHIBITION AND THE DOMESTIC ANIMAL WASTE DISCHARGE PROHIBITION, AND (2) ESTABLISH TOTAL MAXIMUM DAILY LOADS FOR PATHOGENS IN APTOS CREEK, VALENCIA CREEK, AND TROUT GULCH**

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) will accept comments on the proposed approval of an amendment to the Basin Plan that would: (1) add the Aptos Creek Watershed to the Human Fecal Material Discharge Prohibition and the Domestic Animal Waste Discharge Prohibition, and (2) establish Total Maximum Daily Loads for pathogens in Aptos Creek, Valencia Creek, and Trout Gulch. The amendment, the State Water Board draft agenda item, and draft resolution are available on the State Water Board's Web site at http://www.waterboards.ca.gov/water_issues/programs/tmdl/index.shtml#rb3 or can be received by mail by contacting Michael Buckman at (916) 341-5479. The amendment was adopted by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) on May 8, 2009. The State Water Board will separately publish a notice of the meeting at which it will consider approval of the amendment.

Comment letters to the State Water Board **must be received by 12:00 noon on June 29, 2010.** After the deadline, State Water Board staff will not accept additional written comments unless the State Water Board determines that such comments should be accepted. Please send comments on the proposed State Water Board approval of the amendment to: Jeanine Townsend, Clerk to the Board, by email at (commentletters@waterboards.ca.gov) (If less than 15 megabytes in size or less), (916) 341-5620 (fax), or by mail addressed to State Water Resources Control Board, 1001 I Street, Sacramento, CA 95814. Please also indicate in the subject line, **"Comment Letter – Aptos Creek Watershed - Fecal Coliform TMDLs."**

Incorporation of Comments by Reference: Comments must specifically address the version of the amendment that is currently being considered for approval by the State Water Board. If similar or identical comments were submitted to the Central Coast Water Board, the commenter must explain why and in what manner each of the responses provided by the Central Coast Water Board to each comment was inadequate or incorrect. If the comment does not include such an explanation, the State Water Board will presume that the Central Coast Water Board's response adequately addressed the commenter's concern.

California Environmental Protection Agency

Please direct questions about this notice to Michael Buckman, Division of Water Quality, at (916) 341-5479 or (mbuckman@waterboards.ca.gov) or Steven H. Blum, Senior Staff Counsel, at (916) 341-5177 or (sblum@waterboards.ca.gov).

June 8, 2010
Date

Jeanine Townsend

Jeanine Townsend
Clerk to the Board

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**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF WATER QUALITY
DATE: TO BE DETERMINED**

ITEM

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL COAST REGION (BASIN PLAN) TO: (1) ADD THE APTOS CREEK WATERSHED TO THE HUMAN FECAL MATERIAL DISCHARGE PROHIBITION AND THE DOMESTIC ANIMAL WASTE DISCHARGE PROHIBITION, AND (2) ESTABLISH TOTAL MAXIMUM DAILY LOADS FOR PATHOGENS IN APTOS CREEK, VALENCIA CREEK, AND TROUT GULCH

DISCUSSION

On May 8, 2009, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2009-0025 ([Attachment I](#)) amending the Basin Plan to: (1) add the Aptos Creek Watershed to the Human Fecal Material Discharge Prohibition and the Domestic Animal Waste Discharge Prohibition, and (2) establish Total Maximum Daily Loads (TMDLs) for pathogens in Aptos Creek, Valencia Creek, and Trout Gulch (Aptos Creek Watershed).

Impairment

Aptos Creek and Valencia Creek are listed on the 2006 federal Clean Water Act (CWA) section 303(d) List of Water Quality Limited Segments (List) because they did not meet water quality standards as demonstrated by elevated pathogen indicator levels. Trout Gulch is not on the List, but the Central Coast Water Board found that it is also impaired because fecal coliform concentrations exceed water quality objectives. Because the Aptos Creek and Valencia Creek are listed, CWA section 303(d) requires the establishment of a TMDL. TMDLs are also authorized under CWA section 303(d)(3) for waters not included on the List, and a TMDL can constitute a plan of implementation under Water Code section 13242. As a result, a TMDL was also developed for Trout Gulch. A TMDL specifies load allocations for nonpoint sources and wasteload allocations for point sources that, when implemented, are expected to result in attainment of applicable water quality standards. Since these TMDLs are being established through a Basin Plan amendment, state law requires an implementation plan and schedule to ensure that the TMDLs are achieved.

The amendment addresses the pathogen impairment of the Aptos Creek Watershed by establishing TMDLs and applying two prohibitions to the watershed. The water quality objectives in the Basin Plan are set at established levels of indicator bacteria, in this case fecal coliform, that demonstrate the presence of fecal pollution. Indicator organisms such as these have long been used to protect bathers from illnesses that may be contracted during recreational activities in surface waters contaminated by fecal pollution. These organisms often do not cause illnesses directly, but are good indicators of the existence of harmful pathogens. Current fecal coliform concentrations in the Aptos Creek Watershed exceed the existing Basin Plan numeric water quality objectives for protecting the Water Contact Recreation beneficial use.

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Sources

In decreasing order of contribution the controllable sources contributing pathogens (indicated by fecal coliform) to the Aptos Creek Watershed are: (1) storm drain discharges to the municipally owned and operated separate storm sewer system (MS4) which must be governed by a National Pollutant Discharge Elimination System (NPDES) permit, (2) pet waste in areas that do not drain to the MS4, (3) County of Santa Cruz sanitary sewer collection system spills and leaks, (4) private sewer laterals that connect to municipal sewage system collection systems, and (5) farm animals/livestock discharges.

Targets and TMDL Allocations

The amendment establishes a numeric target equal to the Basin Plan water quality objectives for the protection of the water contact recreation beneficial use. The numeric target used to develop the TMDLs is:

Fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, shall not exceed a log mean of 200 most probable number (MPN) per 100 milliliters (mL), nor shall more than 10 percent of samples collected during any 30-day period exceed 400 MPN per 100 mL.

Responsible parties are assigned one of two possible allocations. Responsible parties are either assigned an allocation equal to the numeric target or an allocation of zero. The allocation of zero or no loading is assigned to responsible parties whose discharge would include untreated human waste and thus pose a greater health risk than most bacteria of other origins.

The responsible parties that were given the allocations equal to the TMDLs' target include the MS4 covered by an NPDES permit, owners/operators of land used for/containing pets, and owners/operators of land used for/containing farm animals and livestock. The responsible party for each of these sources must not discharge or release a load of fecal coliform that will increase the concentration above the assimilative capacity of a water body. All responsible parties for sources of fecal coliform to the Aptos Creek Watershed will be accountable to attain these allocations. Under the TMDLs, parties that have been assigned allocations are not responsible for natural (uncontrollable) sources.

Responsible parties that must comply with the Human Fecal Material Discharge Prohibition are assigned a waste load allocation of zero; no discharge of fecal coliform bacteria load originating from human sources is allowed. These responsible parties include Santa Cruz County Sanitation District (SCCSD) for sources from spills or leaks of the sewer collection system and owners of private laterals, who are responsible for sources from spills or leaks. An implicit margin of safety is incorporated in the TMDLs through conservative assumptions.

Prohibitions

The amendment adds the Aptos Creek Watershed onto the list of affected areas of two Basin Plan prohibitions. The two Basin Plan prohibitions are the Domestic Animal Waste Discharge Prohibition and the Human Fecal Material Discharge Prohibition. The Domestic Animal Waste Discharge Prohibition is intended to address pet, farm animal, and livestock discharges in areas that do not drain to the MS4. The Human Fecal Material Discharge Prohibition is intended to address spills and leaks from the sanitary sewer collection systems, as well as private sewer lateral leaks.

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Implementation

The purpose of the implementation plan is to describe the steps necessary to reduce fecal coliform loads in order to achieve the TMDLs. The Central Coast Water Board will address fecal indicator bacteria discharged from the County of Santa Cruz MS4 entity by regulating it under the provisions of the State Water Board's General Permit for the Discharges of Storm Water from Small MS4s (General Permit) (NPDES No. CAS000004) and any subsequent iteration of the General Permit. As an enrollee under the General Permit, the County of Santa Cruz must develop and implement a Storm Water Management Plan (SWMP) that controls urban runoff discharges into and from its storm water system. To address the MS4 entity's TMDL wasteload allocation, the Central Coast Water Board will require the County of Santa Cruz MS4 to specifically target fecal indicator bacteria in urban runoff through incorporation of a Wasteload Allocation Attainment Plan in its SWMP.

The Central Coast Water Board will use the Domestic Animal Waste Discharge Prohibition to address sources of fecal material from domestic animals that do not drain to the MS4. Owners and/or operators of lands containing domestic animals in the Aptos Creek Watershed must comply with the Domestic Animal Waste Discharge Prohibition. Compliance with the prohibition implies compliance with the load allocation for these TMDLs.

The entity with jurisdiction over the sewer collection system in the Aptos Creek Watershed is SCCSD. SCCSD must comply with the Human Fecal Material Discharge Prohibition; thus its wasteload allocation for sewer system spills and leaks is zero. To comply with the prohibition, SCCSD must continue to implement its Collection System Management Plan, as required by its Waste Discharge Requirements (WDR). In addition, SCCSD is required by its WDR to improve maintenance of its sewage collection system, including identification, correction, and prevention of sewage leaks in portions of the collection system that run through or adjacent to, impaired surface waters within the Aptos Creek Watershed. Compliance with its WDR will demonstrate compliance with its wasteload allocation and the Human Fecal Material Discharge Prohibition.

Individual owners and operators of private laterals to sanitary sewer collection systems are ultimately responsible for maintenance, and are, therefore, responsible for complying with the Human Fecal Material Discharge Prohibition; compliance with the prohibition implies compliance with the applicable load allocations for these TMDLs. However, because leaks from private laterals located in Aptos Creek Watershed results in a source of fecal indicator bacteria in the Santa Cruz County MS4, the County will address fecal indicator bacteria from private lateral leaks in the Wasteload Allocation Attainment Program as required in its SWMP.

Evaluation

The Central Coast Water Board has committed to perform a review of implementation actions and monitoring results every three years, beginning three years after the TMDLs are approved by the Office of Administrative Law (OAL). The Central Coast Water Board plans to use annual reports, nonpoint source pollution control implementation programs, monitoring results, and other available information, to review implementation progress toward achieving the allocations and the numeric target. The Central Coast Water Board plans to continue three-year reviews until the TMDLs are achieved. The target date to achieve the TMDLs is 13 years after the date of approval by the OAL.

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Cost Estimate

Most of implementation actions, monitoring, and reporting costs are currently required under existing Water Board permits and requirements. However, costs for additional measures that may be required to implement these TMDLs have been estimated as follows: Additional pathogen-specific management measures for the County of Santa Cruz, the local agency that is responsible for stormwater management ranges from an estimated 2 to 15 percent increase to its annual program budget. Additional monitoring costs are estimated to be approximately \$5,600 per year. The cost associated with repair of a leaking private lateral is estimated to be \$5,000 with the cost to test for leaks in a private lateral at approximately \$1,000. The costs estimated for control of pet waste discharges include bags that can be used to pick up waste and are available starting at approximately \$2.50 to \$4.50 per box. For the control of livestock and domesticated animals the measures could include barriers, bunkers, corrals, and professional stabling with upper estimates of \$4,000 per mile, \$15,000 per structure, \$4000 per gate, and \$550 per month respectively.

When the Central Coast Water Board adopted Resolution No. R3-2009-0008, the amendment to the Water Quality Control Plan for the Central Coast Basin to: (1) add Total Maximum Daily Loads for fecal coliform in the Pajaro River Watershed; (2) add a Domestic Animal Waste Discharge Prohibition; and (3) add a Human Fecal Material Discharge Prohibition, it included in the Basin Plan potential sources of financing for the Domestic Animal Waste Discharge Prohibition. Those potential sources of financing apply equally to the agricultural water quality control program in the Aptos Creek Watershed.

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to add the Aptos Creek Watershed to the Human Fecal Material Discharge Prohibition, add the Aptos Creek Watershed to the Domestic Animal Discharge Prohibition, and establish Total Maximum Daily Loads for pathogens in Aptos Creek, Valencia Creek, and Trout Gulch?

FISCAL IMPACT

Central Coast Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, approval of this resolution will amend the Central Coast Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the amendment to the Basin Plan adopted under Central Coast Water Board Resolution No. R3-2009-0025.

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2. Authorizes the Executive Director or designee to submit the amendment adopted under Central Coast Water Board Resolution No. R3-2009-0025, as approved, and the administrative record for this action to the OAL and the TMDLs to the U.S. Environmental Protection Agency for approval.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Action 1 to prepare, adopt, and take steps to carry out Total Maximum Daily Loads (TMDLs), designed to meet water quality standards, for all impaired water bodies on the 2006 list.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL COAST REGION (BASIN PLAN) TO (1) ADD THE APTOS CREEK WATERSHED TO THE HUMAN FECAL MATERIAL DISCHARGE PROHIBITION AND THE DOMESTIC ANIMAL WASTE DISCHARGE PROHIBITION, AND (2) ESTABLISH TOTAL MAXIMUM DAILY LOADS FOR PATHOGENS IN APTOS CREEK, VALENCIA CREEK, AND TROUT GULCH

WHEREAS:

1. On May 08, 2009, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2009-0025 ([Attachment I](#)) amending the Basin Plan to add the Aptos Creek Watershed to the Human Fecal Material Discharge Prohibition, add the Aptos Creek Watershed to the Domestic Animal Discharge Prohibition, and establish Total Maximum Daily Loads (TMDLs) for pathogens in Aptos Creek, Valencia Creek, and Trout Gulch.
2. The elements of a TMDL are described in 40 Code of Federal Regulations (CFR) sections 130.2 and 130.7 and section 303(d) of the Clean Water Act (CWA), and U.S. Environmental Protection Agency guidance documents. A TMDL is defined as “the sum of individual waste load allocations for point sources and load allocations for nonpoint sources and natural background” (40 CFR §130.2). The Central Coast Water Board has determined that the TMDLs for pathogens in the Aptos Creek Watershed have been set at levels necessary to attain and maintain the applicable numeric water quality objectives, taking into account seasonal variations and any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR §130.7 (c)(1)). The regulations in 40 CFR section 130.7 also state that TMDLs must take into account critical conditions for stream flow, loading, and water quality parameters. TMDLs are often expressed as a mass load of the pollutant but can be expressed as a unit of concentration if appropriate (40 CFR §130.2(i)). Expressing these TMDLs as units of concentration is appropriate because in this case an existing concentration-based water quality objective was used as the basis for the TMDLs’ numeric target.
3. The Central Coast Water Board may, pursuant to California Water Code section 13243, specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted (i.e., prohibitions). The Implementation Plan for the TMDLs for the Aptos Creek Watershed requires compliance with the Human Fecal Material Discharge Prohibition and the Domestic Animal Waste Discharge Prohibition for discharges in the Aptos Creek Watershed. Supporting documentation for adding the Aptos Creek Watershed is provided in the Final Project Reports for Total Maximum Daily Loads for Pathogens in Aptos Creek, Valencia Creek and Trout Gulch. Consistent with California Water Code section 13244, the Central Coast Water Board complied with public notice and hearing requirements for adding the Aptos Creek Watershed to the Human Fecal Material Discharge and the Domestic Animal Waste Discharge Prohibitions.

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4. The Central Coast Water Board found that the establishment of these TMDLs is consistent with the provisions of the State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" and 40 CFR 131.12. Adoption of these TMDLs will result in improved water quality throughout the region and maintain the level of water quality necessary to protect present and potential beneficial uses.
5. The Central Coast Water Board concurred with the analysis contained in the Final Project Report, the California Environmental Quality Act substitute environmental documentation for the Basin Plan Amendment, including the CEQA Checklist, the staff report and the responses to comments, and found that these analyses comply with the requirements of the State Water Board's certified regulatory CEQA process, as set forth in California Code of Regulations, Title 23, section 3775 et seq. Furthermore, the Central Coast Water Board found that these analyses fulfill the Central Coast Water Board's obligations attendant with the adoption of regulations "requiring the installation of pollution control equipment, or a performance standard or treatment requirement," as set forth in section 21159 of the Public Resources Code. The Central Coast Water Board's environmental analysis has taken into account a reasonable range of environmental, economic, and technical factors.
6. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans; section 13242, which requires a program of implementation to achieve water quality objectives; and section 13243 which authorizes Regional Water Quality Control Boards to specify certain conditions or areas where the discharges of certain types of waste will not be permitted. The State Water Board also finds that the three TMDLs, as reflected in the Basin Plan amendment, are consistent with the requirements of federal CWA section 303(d).
7. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subd. (b). The necessity of developing a TMDL is established in the TMDLs staff report, the CWA section 303(d) List of Water Quality Limited Segments, and the data contained in the administrative record documenting the pathogen impairments of the Aptos Creek Watershed.
8. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDLs must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under Central Coast Water Board Resolution No. R3-2009-0025.

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2. Authorizes the Executive Director or designee to submit the amendment adopted under Central Coast Water Board Resolution No. R3-2009-0025, as approved, and the administrative record for this action to the OAL and the TMDLs to the U.S. Environmental Protection Agency for approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on _____ TBA _____.

Jeanine Townsend
Clerk to the Board